

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION ACT 2014 (COMMENCEMENT NO. 9) AND IMMIGRATION
ACT 2014 (COMMENCEMENT NO. 8) (REVOCATION) ORDER 2023

2023 No. 1245 (C. 88)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This Order is the ninth commencement order made under the Immigration Act 2014 (the Act).
- 2.2 This memorandum should be read in conjunction with the explanatory memorandum to the Immigration Act 2014 (Commencement No. 8) Order 2023 (Commencement Order No. 8), which was submitted alongside that instrument on 16 November 2023. Commencement Order No. 8 contained an error in that it stated that the day appointed for the coming into force of sections 23(6) and 25(5) of the Act is 28 November 2023 and the intention was for these sections to come into force on 6 December 2023. This Order corrects the error in Commencement Order No. 8 by revoking and remaking it. By virtue of this Order, sections 23(6) and 25(5) (which are currently in force in England only) will be brought fully into force across the UK on 14 December 2023. The appointed date has been extended from 6 December to 14 December to allow a minimum of 21 days between this Order being laid and the coming into force of sections 23(6) and 25(5) of the Act.
- 2.3 This memorandum should also be read in conjunction with the explanatory memorandum to the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023 (the Maximum Penalty Order), which was laid in draft before Parliament on 15 November 2023 and is subject to the affirmative resolution procedure. The Maximum Penalty Order will rely on the powers at section 23(6) and 25(5) of the Act to amend the specified maximum penalty amounts (at sections 23(2) and 25(4) of the Act) which may be imposed on a landlord or agent who contravenes the Right to Rent civil penalty scheme from £3,000 to £20,000.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument corrects a defect in Commencement Order No. 8, which was made on 14 November 2023 and laid before Parliament on 16 November 2023. The Department has acknowledged the defect in the memorandum to Commencement Order No. 8 (S.I. 2023/1215), which was published alongside that instrument on 16 November 2023. The Department's view is that Commencement Order No. 8 would have come into force on 28 November 2023, but that the defect in that Order would not have achieved the original policy intent. It was intended that Commencement Order No. 8 would come into force on 6 December 2023.

- 3.2 This Order rectifies that defect by revoking Commencement Order No. 8 before it comes into force and remaking it. The Department regrets that this instrument breaches the 21-day rule as it was necessary to bring articles 1 and 3 into force prior to 28 November 2023 in order to revoke the defective instrument before it could come into force. This Order will come into force, for the purpose of revoking Commencement Order No. 8, on 28 November 2023. However, this Order will reset the clock so that the powers at sections 23(6) and 25(5) will not come into force until 14 December. This will allow a minimum of 21 days between this Order being laid and the coming into force of the provisions (appointing the day for the coming into force of sections 23(6) and 25(5)) at article 2 of this Order.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is across the UK.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England. This is because, although the textual amendments the Department intends to make to sections 23(2) and 25(4) (amending the maximum penalty amounts from £3,000 to £20,000) by virtue of the Maximum Penalty Order will extend across the UK statute book, there will only be a practical effect in England.
- 4.3 Sections 20 to 31 (except sections 23(6) and 25(5)) and Schedule 3 to the Act are not being brought into force in an area of the UK other than England by virtue of this Order. These are the powers required to give the Right to Rent civil penalty scheme practical effect and include the powers to impose a civil penalty on a landlord or agent at sections 23(1) and 25(3) of the Act. These powers are currently in force in respect of premises located in England only, and this Order does not change this.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

What did any law do before the changes to be made by this instrument?

- 6.1 Chapter 1 of Part 3 of the Act provides for the Scheme. Within the Scheme, the Secretary of State can serve a landlord (or an agent if there is a written agreement between them and the landlord that they be responsible for the checks) with a notice requiring the payment of a civil penalty of a specified amount when they have let accommodation to somebody who is disqualified from renting as a result of their immigration status. A landlord or agent can carry out simple document checks, and in some cases make a report to the Home Office, in order to establish and maintain a statutory excuse against a penalty.
- 6.2 The Immigration Act 2014 (Commencement Number 3, Transitional and Savings Provisions) Order 2014 brought the Scheme into operation in the West Midlands (pilot scheme) areas of Birmingham, Wolverhampton, Dudley, Sandwell and Walsall on 1 December 2014. The Immigration Act 2014 (Commencement No. 6) Order 2016 brought the Scheme into operation across the rest of England on 1 February 2016.

- 6.3 This Order brings into force the powers at sections 23(6) and 25(5) of the Act across the UK for the purpose of making textual amendments to sections 23(2) and 25(4). As the Act is a UK-wide Act, the powers at sections 23(6) and 25(5) extend across the UK. If the powers at sections 23(6) and 25(5) (to amend the maximum civil penalty amounts) were exercised by way of the Maximum Penalty Order without this Order, the specified maximum civil penalty amounts at sections 23(2) and 25(4) of the Act could have been amended from £3,000 to £20,000 by limiting the extent/application of those amendments to England only in the Maximum Penalty Order.
- 6.4 However, if the extent/application of the Maximum Penalty Order was limited to England in this way, it would not have been clear to the reader of sections 23(2) and 25(4) (once amended) that those textual amendments only apply in England. This drafting approach was considered in depth by the Home Office, but it was concluded that it would be contrary to best drafting practice to make amendments to a UK-wide Act by statutory instrument which have a more limited extent than the provisions being amended. This is because such amendments would have created parallel texts in different parts of the UK, and conflicting texts in England and Wales, which would have been confusing and a potential trap for the reader of those provisions. This Order is necessary to respect this principle as it means that the textual amendments being made to sections 23(2) and 25(4) of the Act will extend across the UK statute book, even though the Right to Rent civil penalty scheme will continue to apply in England only in practice

7. Policy background

What is being done and why?

- 7.1 The Right to Rent Scheme (the Scheme) is part of a package of measures designed to tackle and deter illegal immigration. It is intended to prevent individuals without lawful immigration status from accessing the Private Rented Sector in England, and to support efforts to tackle those who exploit vulnerable migrants.

Why is it being changed?

- 7.2 Civil penalties for non-compliance have remained the same since 2014 and the Government is concerned that they do not now provide a sufficient deterrent to those contemplating entering the UK illegally or reflect either the full economic advantage derived by those who profit from illegal migration or the wider costs to society. The Government intends to reform the Scheme so that it becomes tougher on rogue landlords by increasing the level of the maximum penalties for a breach of the Scheme, thereby acting as a deterrent to prevent landlords from renting to a person disqualified from renting as a result of their immigration status. By so doing, the Government aims: to change the behaviour of rogue landlords; to eliminate any financial gain or benefit from non-compliance; to tackle the harm caused by regulatory non-compliance, where appropriate; and to deter future non-compliance.

What will it now do?

- 7.3 The maximum civil penalty for landlords (including letting agents) will be raised, by virtue of the Maximum Penalty Order from £3,000 to £20,000. The actual amount of a penalty that may be imposed will be determined by the Code of Practice on Right to Rent: civil penalty scheme for landlords and their agents (“the Code”). A draft of the

Code was laid before Parliament on 15 November 2023. The Code will be brought into force by virtue of the Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2023 (the Code of Practice Order). The Home Office intends to lay the Code of Practice Order at the same time that the Maximum Penalty Order is made. This will allow the Maximum Penalty Order and the Code of Practice Order to come into force at the same time. The reason for this is that the Home Office does not know when the Maximum Penalty Order will be commenced until that Order has been debated and approved by both Houses of Parliament. The Maximum Penalty Order is due to come into force on 22 January 2024 or, if later, on the twenty-first day after the day on which it is made (signed).

- 7.4 The Code will provide for a penalty of £5,000 per lodger and £10,000 per occupier for a first breach from £80 and £1,000 respectively; and up to £10,000 per lodger and £20,000 per occupier from £500 and £3000, respectively, for repeat breaches (within the last 3 years). In the case of a first breach, landlords and their agents who elect to pay the penalty via the Fast Payment Option will benefit from a 30% reduction from £10,000 to £7,000 or from £5,000 to £3,500 as applicable.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union and therefore does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 No consolidation issues arise as a result of this instrument.

10. Consultation outcome

- 10.1 The Home Office has not consulted. However, the Home Office has engaged with landlords (letting agents) and their representatives to support implementation of this instrument. This includes established Home Office-led fora such as the Home Office consultation groups, as part of engagement with other government departments, or upon invitation to other events including webinars.

11. Guidance

- 11.1 Guidance for landlords (letting agents) is not required for this change.

12. Impact

- 12.1 This Order brings into force enabling powers required to amend primary legislation by Order. There is no, or no significant impact on businesses, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector voluntary, or community bodies as a result of this Order.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 The Environmental impact has been considered in accordance with the duty imposed by section 19 of the Environmental Act 2021. No negative environmental impacts have been identified for this change.

13. Regulating small business

- 13.1 This legislation applies to activities that are undertaken by small businesses. However, this Order brings into force enabling powers required to amend primary legislation by Order. This Order will have no, or no significant impact, on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that an internal review will be carried out within 12 months and the legislation may be amended accordingly.

15. Contact

- 15.1 John Harrison at the Compliant Environment and Enforcement Unit, Home Office, email john.harrison@homeoffice.gov.uk and Scott Bailey at the Compliant Environment and Enforcement Unit, Home Office, email: scott.bailey2@homeoffice.gov.uk
- 15.2 Rebecca Nugent, Deputy Director for Compliant Environment and Enforcement Unit at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Robert Jenrick MP, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.